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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/687,848	10/17/2003	Richard S. Ginn	937.04	2084
8685	7590	09/08/2008		
DERGOSITS & NOAH LLP FOUR EMBARCADERO CENTER, SUITE 1450 SAN FRANCISCO, CA 94111			EXAMINER TYSON, MELANIE RUANO	
			ART UNIT 3773	PAPER NUMBER
			MAIL DATE 09/08/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/687,848

Applicant(s)

GINN, RICHARD S.

Examiner

Melanie Tyson

Art Unit

3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 June 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-3 and 9-11 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-3 and 9-11 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/CDC)
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date: _____

DETAILED ACTION

Election/Restrictions

Applicant's election of Group I in the reply filed on 20 June 2008 is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election **without traverse** (MPEP § 818.03(a)). The applicant has cancelled claims 4-8 and 12.

Response to Arguments

Applicant's arguments with respect to claims 1-3 and 9-11 have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1 and 9 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The limitations "a bioabsorbable occlusion member in contact with said lumen of said elongate member and located distally of said distal opening" and "said lumen of said elongate member contacts said occlusion member and said occlusion member includes a bioabsorbable material and is **distal** from said first opening" are unclear. It is unclear as to how the occlusive member can be located distally of the distal opening, yet be in contact with the lumen that is defined as

extending between and connects the distal and proximal openings. Furthermore, the phrase "such that blood flow through said proximal opening" is vague and unclear.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-3 and 9-11 are rejected under 35 U.S.C. 102(b) as being anticipated by Diaz (5,690,674). Diaz discloses a locator device (see entire document) comprising an elongate member (300) having distal (302) and proximal (301) openings connected by a lumen (310), and a bioabsorbable expandable occlusion member (100; for example, see column 3, lines 16-18) in contact with the lumen of the elongate member and located distally of the distal opening of the elongate member upon deployment, wherein the occlusion member is releasably coupled to the elongate member (for example, see Figure 10). The elongate member is adapted to extend into a blood vessel of a patient such that blood flow through the proximal opening is visible outside of the patient's body (for example, see Figure 1). The elongate member is adapted to extend into a blood vessel of a patient such that the distal opening and the occlusion member is fully inserted into the lumen of a blood vessel (for example, see Figure 7). The occlusion member is capable of substantially blocking blood flow out of a blood vessel if it were withdrawn from the blood vessel lumen (the occlusion member is elastic, thus is capable of being withdrawn from the vessel to a position outside the vessel wall).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melanie Tyson whose telephone number is (571)272-9062. The examiner can normally be reached on Monday through Thursday 8:30-7 (max flex).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571) 272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Melanie Tyson /M. T./
Examiner, Art Unit 3773
September 4, 2008

/(Jackie) Tan-Uyen T. Ho/
Supervisory Patent Examiner, Art Unit 3773